

MONTANA LEGISLATIVE HISTORY

Chapter 188 19 91

Bill H 555 S _____ Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) Feb 15 ☒ c

Feb 17 ☒ c

_____ ☐ c

_____ ☐ c

Date Out Feb 18 ☒ c

S. Committee on Judiciary

Hearing Date(s) Mar 02 ☒ c

_____ ☐ c

_____ ☐ c

_____ ☐ c

Mar 02 ☒ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HB 554

HOUSE FINAL STATUS

2/14	HEARING		
2/15	SPONSOR FISCAL NOTE PRINTED		
3/07	COMMITTEE REPORT—BILL PASSED AS AMENDED	63	31
3/09	2ND READING PASSED		
3/09	TAKEN FROM ENGROSSING AND REREFERRED TO APPROPRIATIONS		
3/22	HEARING		
3/23	TABLED IN COMMITTEE		

HB 554 INTRODUCED BY BENEDICT
REVISE INDIGENT COURT FILING

2/01	INTRODUCED		
2/01	REFERRED TO JUDICIARY		
2/02	FIRST READING		
2/13	HEARING		
2/13	TABLED IN COMMITTEE		

HB 555 INTRODUCED BY HOFFMAN
REVISE CRIMINAL PROOF AND PRESUMPTIONS
BY REQUEST OF DEPARTMENT OF JUSTICE

2/01	INTRODUCED		
2/01	REFERRED TO JUDICIARY		
2/02	FIRST READING		
2/15	HEARING		
2/19	COMMITTEE REPORT—BILL PASSED		
2/21	PLACED ON CONSENT CALENDAR		
2/23	3RD READING PASSED	96	2
	TRANSMITTED TO SENATE		
2/25	FIRST READING		
2/25	REFERRED TO JUDICIARY		
3/07	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	49	0
3/12	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/20	SIGNED BY PRESIDENT		
3/20	SIGNED BY SPEAKER		
3/21	TRANSMITTED TO GOVERNOR		
3/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 188		

EFFECTIVE DATE: 3/26/91

HB 556 INTRODUCED BY REAM, ET AL.

REVISE LAW ON IDENTIFICATION, TRANSPORTING,
AND INSPECTION OF GAME FARM ANIMAL

2/01	INTRODUCED		
2/01	REFERRED TO FISH & GAME		
2/02	FIRST READING		
2/02	FISCAL NOTE REQUESTED		
2/07	FISCAL NOTE RECEIVED		
2/08	FISCAL NOTE PRINTED		
2/19	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	PLACED ON ALTERNATIVE CONSENT CALENDAR		
2/23	3RD READING PASSED	90	8
	TRANSMITTED TO SENATE		
2/25	FIRST READING		
2/25	REFERRED TO FISH & GAME		
3/19	HEARING		
3/27	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/01	2ND READING CONCURRED	48	1

HOUSE BILL NO. 555

INTRODUCED BY HOFFMAN
BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE HOUSE

FEBRUARY 1, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 2, 1991	FIRST READING.
FEBRUARY 19, 1991	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 20, 1991	PRINTING REPORT.
FEBRUARY 21, 1991	POSTED ON CONSENT CALENDAR.
FEBRUARY 22, 1991	CONSENT CALENDAR, QUESTIONS AND ANSWERS.
FEBRUARY 23, 1991	THIRD READING, PASSED. AYES, 96; NOES, 2.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 25, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 7, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 11, 1991	SECOND READING, CONCURRED IN.
MARCH 12, 1991	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 13, 1991	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. 555
2 INTRODUCED BY *H. J. ...*
3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REMOVE UNLAWFUL
6 PRESUMPTIONS AND BURDEN-SHIFTING LANGUAGE FROM CRIMINAL
7 OFFENSE STATUTES; AMENDING SECTION 45-5-201, MCA; REPEALING
8 SECTION 45-6-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
9 DATE."
10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 **Section 1.** Section 45-5-201, MCA, is amended to read:
13 "45-5-201. Assault. (1) A person commits the offense of
14 assault if he:
15 (a) purposely or knowingly causes bodily injury to
16 another;
17 (b) negligently causes bodily injury to another with a
18 weapon;
19 (c) purposely or knowingly makes physical contact of an
20 insulting or provoking nature with any individual; or
21 (d) purposely or knowingly causes reasonable
22 apprehension of bodily injury in another. ~~The purpose to~~
23 ~~cause reasonable apprehension or the knowledge that~~
24 ~~reasonable apprehension would be caused shall be presumed in~~
25 ~~any case in which a person knowingly points a firearm at or~~

1 ~~in the direction of another, whether or not the offender~~
2 ~~believes the firearm to be loaded.~~
3 (2) Except as provided in subsection (3), a person
4 convicted of assault shall be fined not to exceed \$500 or be
5 imprisoned in the county jail for any term not to exceed 6
6 months, or both.
7 (3) If the victim is less than 14 years old and the
8 offender is 18 or more years old, the offender, upon
9 conviction under subsection (1)(a), shall be fined not to
10 exceed \$50,000 or be imprisoned in the state prison for a
11 term not to exceed 5 years, or both."
12 NEW SECTION. **Section 2.** Repealer. Section 45-6-304,
13 MCA, is repealed.
14 NEW SECTION. **Section 3.** Effective date. [This act] is
15 effective on passage and approval.

-End-

notify them of on arraignment the other section what you have to notify them of if there is a plea bargain. SB 51 takes those two sections and combines them so there is only one point in time in which you have to notify them of various rights or things that may happen to them. If SB 51 passes you only need this bill amended into it in one place and that is what this coordination instruction will do.

REP. TOOLE stated he opposes the amendment.

REP. RICE stated if he understands John MacMaster's amendment, if we change this both sections will remain in the law.

John MacMaster said if this bill does pass, both of those sections will still remain in the law and the judges will still have to inform them of their rights at the arraignment and on the plea. The only thing that will happen if we don't pass this is you will not be adding to each of those sections a provision that the judge also has to inform him that if he is not a U.S. citizen a guilty plea might have some dire results.

Motion/Vote: REP. BROWN moved John MacMasters amendment. Motion carried 18 to 2 with Rep's: Toole and Measure voting no.

Motion/Vote: REP. BROWN MOVED HB 439 DO PASS AS AMENDED. Motion carried.

HEARING ON HB 555
REVISE CRIMINAL PROOF AND PRESUMPTIONS

Presentation and Opening Statement by Sponsor:

REP. HOFFMAN, HOUSE DISTRICT 74, stated that section one of the bill deals with the assault statute that requires presumption of a purpose to cause harm to another. Section two of the bill deals with section 45-6-304 which places the presumption on the defendant.

Proponents' Testimony:

Beth Baker, Department of Justice, stated this bill will remove two provisions which contain unconstitutional language. Section one amends the assault statute, section 45-5-201, by striking language that requires a presumption of a purpose to cause bodily harm to another. This section has not, itself, been declared unconstitutional, as we believe it would be. Section two of the bill addresses a section 45-6-304 of which places the burden on the defendant to explain his possession of stolen property. HB 555 will repeal this section. There are two reason for proposing to repeal this statute. First a significant amount of case law has developed in respect to the juries consideration of possession of stolen property which makes this statute

unnecessary. The second reason is based upon practicality. Presumption is confusing to a jury because it attempts to instruct the jury as to how it should consider certain evidence that is based on that definition. Repealing the statute would allow the possibility of reading instructions to the jury without requiring a court to have the jury consider all the evidence. Ms. Baker encourage the committee to do pass the bill.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor:

REP. HOFFMAN thanked the committee for their consideration of this bill and said he hoped the committee will give it a do pass.

HEARING ON HB 501
INCREASE MINIMUM CIVIL PENALTY FOR SHOPLIFTING

Presentation and Opening Statement by Sponsor:

REP. SCHYE, HOUSE DISTRICT 18, stated that this is a bill to increase the minimum law for civil penalty for shop lifting and was brought to him by a constituent's son who lives in Helena and will explain the bill to you.

Proponents' Testimony:

Lloyd Knutson, Retail Security Operator - Helena, stated shoplifting has gone up 24% in 1982-87. It is estimated over 2.5 million Americans will be arrested for the offense this year. The civil penalty for shoplifting, 21-7-118, is not realistic. To recover the penalty cost of a \$15.50 carton of cigarettes a retailer must charge the consumer a \$2.00 surcharge. Expenses a retailer cannot recover are wages, time to testify at a hearing, and one half the judgement if the collection agency is even willing to attempt to recover the judgement. HB 501 will allow retailers to collect three times the retail value of what was taken or \$50, whichever is greater. The bill is necessary to retailers to recover the costs they lose when their establishment has been a victim of shoplifters.

Charles Brooks, Montana Retail Association, stated that his association supports this bill. The retail industry in Montana is under siege as far as shoplifting is concerned. The industry loses between 30 and 35 million dollars a year just in outside shoplifting, not employee thefts. We need to strengthen our ability to recover. A considerable amount of time is spent trying to keep people from shoplifting and when we do find them shoplifting a lot of time is spent in court. Some laws are needed to help recover costs that are involved.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-15-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 17, 1991,
at 4:00 P.M.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: Rep. Gould

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 555

Motion: REP. STICKNEY MOVED HB 555 MOVED DO PASS. Motion
carried.

EXECUTIVE ACTION ON HB 567

Motion: REP. JOHNSON MOVED HB 567 DO PASS.

Motion/Vote: REP. MEASURE moved to amend HB 567 to strike out

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-17-91

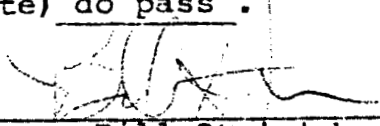
NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD			/
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 555 (first reading copy -- white) do pass.

Signed: 

Bill Strizich, Chairman

bill. Chairman Pinsoneault asked her to prepare an appropriate amendment.

Senator Grosfield asked if the second word on page 3, line 4 would take care of this problem.

Closing by Sponsor:

Representative Hoffman said he had no objection to changing ambiguous language, and asked the Committee to support the bill.

HEARING ON HOUSE BILL 555

Presentation and Opening Statement by Sponsor:

Representative David Hoffman, District 74, said HB 555 would eliminate two portions of the criminal code which were declared unconstitutional by the State of Montana. He explained these portions pertain to burden of proof upon the defendant, and burden of proof concerning stolen property (45-6-304, MCA).

Proponents' Testimony:

John Connor, Department of Justice, told the Committee he was testifying on behalf of Beth Baker who had to appear in the 9th Circuit Court of Appeals this date (Exhibit #2). He said he would like to see this out of the law, as there are so many new prosecutors who aren't familiar with current law.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Towe asked why the first part had to be repealed. John Connor replied that this has been incorporated into new Montana jury instruction guidelines and could cause a conflict.

Closing by Sponsor:

Representative Hoffman made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 555

Motion:

Senator Towe made a motion that HB 555 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously. Senator Svrcek was asked to carry the bill.

HEARING ON HOUSE BILL 310Presentation and Opening Statement by Sponsor:

Representative David Hoffman, District 74, said the bill addresses loopholes defining escape, and was requested by the Department of Justice. He explained that page 2, lines 19-20 correct the problem, which became evident after the court had to let an escapee go because of current language.

Proponents' Testimony:

John Connor, Department of Justice, explained State v. Savarie in which Yellowstone County was transporting prisoners from the jail to appear on charges. He said one of them escaped, although bound with a belly chain and handcuffs, and was apprehended 90 minutes later. John Connor reported that this man was sentenced for misdemeanor escape as he had not escaped from a county jail, but while enroute.

Mr. Connor said the Supreme Court upheld the decision of the district judge in this case. He explained that escape from jail is a felony, but running away from a police officer during arrest is a misdemeanor. John Connor advised the Committee that language was added during the House hearing addressing detention while under jurisdiction of a tribe, but was stricken because of the Duro decision.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Chairman Pinsoneault asked what would happen where a prisoner was being transported from Lake County to Deer Lodge and had to stay overnight in another jail enroute. John Connor replied the chance of that happening would be rather remote. He said the prisoner would probably be taken to a nearby county jail which would be covered by existing law.

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1999

Date 7 Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek			
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

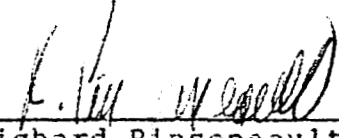
Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 7, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 555 (third reading copy -- blue), respectfully report that House Bill No. 555 be concurred in.

Signed: 
Richard Pinsoneault, Chairman

91

MAR 3-7-91
And. Coord.

SB 3/7 12:05
Sec. of Senate

EXHIBIT # 2
HB 555
Mar 9/

HOUSE BILL 555
REVISING CRIMINAL PROOF AND PRESUMPTIONS
March 7, 1991
Senate Judiciary Committee

In Sandstrom v. Montana, decided in 1979, the United States Supreme Court held that instructions to a jury in a criminal case which shift the burden of proof to a defendant on an essential element of the offense are unconstitutional. Since then, it has been uniformly held that the Due Process Clause prohibits the State from using evidentiary presumptions that have the effect of relieving the State of its burden of proving beyond a reasonable doubt every essential element of a crime.

This bill proposes to remove from our criminal code two provisions that contain unlawful presumptions. The first appears in section 45-5-201, which defines the offense of simple assault. Under subsection (1)(d), a person commits assault if he purposely or knowingly causes reasonable apprehension of bodily injury in another. In its present form, that section provides that the mental state requirement "shall be presumed" in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded. If this statute were applied literally in a criminal case, the prosecution would not have to prove the defendant's mental state if it showed that the defendant pointed a gun at the victim, and the jury would be instructed to presume that the defendant intended to cause reasonable apprehension of bodily injury.

This type of presumption violates the Supreme Court's directives in Sandstrom. The State simply cannot be relieved of its burden of proving every element of the crime beyond a

reasonable doubt. Eliminating this language will remove the potential for error in a criminal case and will diminish confusion in the preparation of jury instructions. The critical elements in an assault case under subsection (1)(d) are whether the defendant caused reasonable apprehension of bodily injury to the victim, and whether he had the purpose to cause such apprehension or the knowledge that such apprehension would result from his conduct. Proof of these elements necessarily depends on the facts and circumstances of each case, and the language surrounding the presumption is not necessary to proof of the offense.

Section 2 of the bill would repeal section 45-6-304, MCA. In essence, that section requires a defendant in a theft case to explain his possession of stolen property. In 1982, that section was expressly held unconstitutional by the Montana Supreme Court in State v. Kramp. The court held that section 45-6-304 takes away the defendant's presumption of innocence and forces him to testify by placing a burden on him either to disprove unlawful possession or to prove lawful possession.

Since the decision in Kramp, section 45-6-304 has not been used. Language from the court's decision has been used in instructions to the jury in a theft case. Last year, in State v. Ramstead, the court sustained a theft conviction where the jury was instructed in accordance with Kramp and stated: "possession of stolen property, accompanied by other incriminating circumstances, and false or unreasonable explanation by the suspect is sufficient to sustain a conviction." This is consistent with federal authority.

HB 505
3-7-91

By repealing section 45-6-304, we will eliminate a constitutional defect in the law and allow trial courts the flexibility to tailor their instructions to the facts of each case. Using either a presumption or an inference can be confusing to a jury, since those terms are imprecise and may not be easily applied in a given situation. There is sufficient guidance in the case law and in the model jury instructions to instruct the jury as to its consideration of evidence without requiring the court to interfere with the jury's right to give all the evidence whatever weight the jury believes it deserves.

3-7-91

DATE _____
Judicious

H.B.

275-276-310-311-55

(Please leave prepared statement with Secretary)